

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

CHRISTINA SMITH, as Personal
Representative of the Estate of her son,
Joshua Christopher England,

Plaintiff,

v.

Case No.: 19-cv-470-G

JOE ALLBAUGH, CARL BEAR,
ROBERT BALOGH, WENDELL MILES,
LAURA HAYS, LAURA NOBLE,
OKLAHOMA DEPARTMENT OF
CORRECTIONS OFFICERS JOHN
DOES #1-10, and CASE MANAGER
RICHARD ROE,

Defendants.

**MOTION FOR RELEASE OF JUVENILE RECORDS WITH BRIEF IN
SUPPORT BY DEFENDANTS ALLBAUGH, BEAR, BALOGH, AND MILES**

For their Motion for Release of Juvenile Records with Brief in Support, Defendants Joe Allbaugh, Carl Bear, Robert Balogh, and Wendell Miles (“Movants”) state the following:

1. Movants respectfully request that this Court order the disclosure of certain confidential child welfare records within the custody and control of the Oklahoma Department of Human Services pursuant to 10A O.S. § 1-6-102(E).

2. Movants are officials and employees, or former officials and employees of the Oklahoma Department of Corrections.

3. Plaintiff alleges that each of the defendants are individually liable for the death of her son and seeks damages against Defendants for loss of consortium, grief, loss

of companionship, lost earnings, etc. pursuant to 12 O.S. § 1053(B)(4)-(5). Upon information and belief, Plaintiff is seeking these damages on behalf of herself and on behalf of England's biological father, Christopher Auvern.

4. The DHS records requested by Movants will contain information bearing on each of these categories of damages. For example, the requested records will contain evidence relating to Mr. England's intellectual, emotional, and vocational aptitude. The records are also expected to contain information relating to Mr. England's health, habits, and other activities bearing on his life expectancy. The requested records will also contain information relating to Mr. England's relationship and companionship with his parents.

5. There is evidence that Mr. England spent time in foster care estranged from his parents. There is also evidence of discord and possible abuse by Plaintiff towards Mr. England. If true, this would affect the magnitude of Plaintiff's damages claims. The requested records will contain information relating to Mr. England's time in foster care and his estrangement from Plaintiff and from Mr. Auvern. The records will also contain information relating to any discord and/or alleged abuse inflicted upon Mr. England by Plaintiff.

6. By bringing this wrongful death action, Plaintiff has put this information at issue. *Cf. Empey v. FedEx Ground Package Sys., Inc.*, No. CV 15-0815 KK/KBM, 2016 WL 10179244 (D.N.M. July 7, 2016).

7. Under 10A O.S. § 1-6-102(E), a court may, after a judicial review of the records and determination of necessity, authorize the inspection, release, and disclosure of otherwise confidential records when the records may be relevant to a civil proceeding.

8. Movants seek the following records held by the Oklahoma Department of Human Services:

- a. Records regarding investigations into any abuse or neglect of Joshua England
- b. Records indicating findings of any abuse or neglect if Joshua England
- c. Records indicating the dates during which Joshua England was removed from the custody of Christina Smith and the reason for each removal
- d. Records indicating the reasons for each removal
- e. Records relating to or describing any services offered or provided by the Oklahoma Department of Human Services to Smith or England
- f. The full child welfare case file regarding Joshua England

9. These records are necessary to evaluate Plaintiff's damages claims.

10. Movants also reasonably believe that these records will contain evidence that will materially assist them in defending against Plaintiff's damages claims.

11. Because the damages sought by Plaintiff are for an alleged wrongful death, and could, if awarded, have a significant financial impact on Movants, each of the Movants has a "compelling reason" for the release of the records under 10A O.S. § 1-6-102(E).

12. In addition, juvenile records are discoverable under the Federal Rules. *Casertano v. Kerwin*, No. 3:09-CV-1853 CFD, 2011 WL 283990, at *2 (D. Conn. Jan. 24, 2011). This is particularly true in wrongful death and survival actions. *Hamilton v. D.C.*, 152 F.R.D. 426 (D.D.C. 1994). Rule 26(b)(1) permits discovery regarding any matter "that is relevant to any party's claim or defense and proportional to the needs of the case." Fed.

R. Civ. P. 26(b)(1). Here, as set forth above, the requested records are relevant to Movants' defense to Plaintiff's damages claim. The records request is also proportional to the needs of the case because the financial stakes in this wrongful death case are high, because Movants have no way to access the requested records but through this process, because producing the records will involve little to no burden to anyone, and because the contents of the records will be used only for purposes of this civil action and will be secured from unnecessary disclosure by the Stipulated Protective Order previously entered in this action. [Doc. 132].

13. Movants' counsel has conferred with Plaintiff's counsel by telephone in a sincere, good faith attempt to resolve this issue, but has been unable to reach an accord. Movant's counsel's office is in Oklahoma City. Plaintiff's counsel's office is in New York City. Thus, a personal conference was not feasible.

WHEREFORE, Movants respectfully request that this Court: (1) enter an immediate ex parte order compelling the Oklahoma Department of Human Services, Legal Services Division, P.O. Box 25352, Oklahoma City, OK 73125-0352, to either produce the requested records to this Court no later than April 24, 2023, or to file an objection prior to that date; and (2) upon judicial review of the records, order the Oklahoma Department of Human Services to produce the records to the parties in this action subject to the Stipulated Protective Order [Doc. 132] previously entered.

Respectfully submitted,

s/ Devan A. Pederson

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2023, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the applicable ECF registrants.

/s Devan Pederson

Devan Pederson